LIBRARY
SUPREME COURT, U.S.

Office Supreme Court, U. S.
FILED
SEP 30 1948
CHARLES ELMORE CROPLEY
CLERK

No. 42

BRIEF FOR PETITIONER

IN THE

Supreme Court of the United States

October Term, 1948

AUGUST KLAPPROTT,

Petitioner,

vs.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

---

P. BATEMAN ENNIS
Shoreham Building
Washington, D. C.
W. CLIFTON STONE
Shoreham Building
Washington, D. C.
MORTON SINGER
135 Broadway
New York City, New York

Attorneys for Petitioner

WILSON - EPES PRINTING CO. - RE 6003 - WASHINGTON 1, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statement of Facts	2
Specifications of Errors	7
Summary of Argument	8
Argument	9
Conclusion	35

TABLE OF CASES CITED

Baumgartner v. United States, 322 U. S. 665; 88 L. Ed. 1525	14, 32, 34, 35
Bergman v. United States, 144 F 2d 35	34
Dartmouth College v. Woodward, 4 Wheat 519, 581 (U. S. 1819)	21
De LaMeer v. People of the State of Michigan Supreme Court Law Ed. Advance Opinions, Vol. 90, No. 7, Page 47	24
Florida East Coast R. Co. vs. McRoberts 111 Fla. 278, 149 So. 631, 94 A. L. R. 376	15
Gallagher v. Cadwell, 145 U. S. 368	28
Galpin v. Page, 18 Wall 350, 368 (U. S. 1873)	21
Garza v. Kennedy, Texas, 229 S. W. 231	26
Hanover F. Ins. Co. v. Furkas, 267 Mich. 14, 255 N. W. 381	15
Holmberg v. Armbrecht, 327 U. S., Page 390, 90 L. ed. 743	27

PAGE

Jogwick v. United States, 142 F 2d 998 34

Keeler Bros. v. Yellowstone Valley National Bank, 225 Fed. 270 28

McClelland v. Shaw, 72 P. 2nd, 22 Cal. App. 2d, 107 26

McDowell v. Bauman, 224 S. W. 641 27

Tony Merino v. Joseph E. Regan, Vol. 92, No. 5, Supreme Court Law Ed. Advance Opinions, Page 203 24

Meyer v. United States, 141 F 2d 285 32

Schneiderman v. United States, 320 U. S. 118, 87 L. ed. 1793 ..... 13, 32, 35

Smith v. Smith, 10 So. 2d, 664, 665; 243 Ala. 488 27

L. B. Wilson Inc. v. Federal Communications Commission, Case No. 9434, United States Court of Appeals for the District of Columbia 22

United States v. American Trucking Association, 310 U. S. 534, 543 22

United States v. Bergman, 144 F 2d 34 16

United States v. Borchers, 163 F 2d 347 17

United States v. Claassen, 56 F. Supp. 71 32

United States v. Geisler, 9 F. R. S. 60 B 51 27

United States v. Giese, 50 F. Supp. 1018 32

United States v. Haas et al, 51 F. Supp. 910 32

United States v. Hartman, 51 Fed. Supp. 394 32

United States v. Hauck et al, 155 F 2d 141 ..... 32, 34

United States v. Heymig, 50 F. Supp. 566, P. 567 14

United States v. Wilbur Keegan et al, 141 F 2d 148, 325 U. S. 348 ..... 3, 5, 20, 24, 25, 26

PAGE

United States v. Koerner, 56 F. Supp. 242 32

United States v. Kusche, 56 F. Supp. 237 32

United States v. Manzi, 276 U. S. 463, 467, 72 L. Ed. 654, 655, 48 S. Ct. 328 14

United States v. Joseph McWilliams et al, 163 F 2d 695 ..... 5, 24, 25, 26, 35

United States v. Mensing, 56 F. Supp. 253 32

United States v. One Case Chemical Compound, 203 F 63 27

United States v. Polzin, 48 F. Supp. 476 15

United States v. Rossler, 144 F 2d 463 32

United States v. Sotzek et al, 144 F 2d 576 32

United States ex rel. Knupfer v. Watkins, 2 Cir. 159 F 2d 675 17

STATUTES CITED

Judicial Code, Section 237 (b) 1

Title 8, U. S. C. A., 738 (a) 9, 10

Revised Statutes of the State of New Jersey, Vol. 1, Sec. 2.50-27 15

Rule 55 (b) (2) Rules of Civil Procedure for the District Courts of the United States 16

MISCELLANEOUS CITATIONS

6 Co. 52; 4 Bla. Com.; 483, 2 Bouvier's Law Dictionary (3rd ed. (Rawle) 1914 2157) 22

IN THE

Supreme Court of the United States

October Term, 1948

No. 42

AUGUST KLAPPROTT,
Petitioner,

vs.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

BRIEF FOR PETITIONER

The opinion in the United States Circuit Court of Appeals for the Third Circuit (R. 26-34) is reported at 166 F. 2d 273.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Third Circuit was entered January 12, 1948 (R 26). It affirmed the order of the United States District Court for the District of New Jersey. Petition for a writ of certiorari was filed on April 10, 1948, and granted May 17, 1948. The jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended.

QUESTIONS PRESENTED

1. Does the Nationality Act provide for a revocation and cancellation of a certificate of citizenship by default?

2. Should petitioner's certificate of citizenship have been cancelled and revoked without the presentation of evidence ex parte?

3. Were petitioner's constitutional rights abridged when, approximately 8 days prior to the prescribed time for answering the civil complaint to cancel his citizenship, he was removed from the State of New Jersey to New York, and held under bond of $25,0000.00, rendering it impossible for him to appear in court in the State of New Jersey at the time the authorities proceeded to take the default judgment for failure to answer the complaint or to appear in the District Court of the United States for the State of New Jersey within the time prescribed.

4. Was petitioner afforded the protection of the due process clause of the Federal Constitution?

5. Should the District Court have appointed counsel to represent petitioner in this proceeding in view of the unusual circumstances?

6. Was petitioner justifiably charged with laches for failing to take steps to reopen his case while confined in jail for approximately 4½ years under one sentence and another criminal indictment?

7. Were the allegations contained in the complaint sufficient to support the charges that petitioner had fraudulently and illegally procured his certificate of citizenship?

STATEMENT OF FACTS

This is an action to set aside and vacate a judgment of the United States District Court for the District of New Jersey, entered July 17, 1942 (R 16), cancelling petitioner's

certificate of citizenship. The complaint was filed by the United States Attorney for the District of New Jersey, and served upon petitioner in the County of Sussex, State of New Jersey, where he was recuperating from a serious illness, following confinement in Christ Hospital, Jersey City, N. J., the seriousness of which illness was such that petitioner at times was in danger of losing his life, and required two blood transfusions (R. 12).

Klapprott was born in Vrochthausen, Germany, September 4, 1906, came to the United States of America in 1927, applied for naturalization November 16, 1933, and was admitted to citizenship in the United States November 16, 1936 (R. 2). He married an American citizen and is the father of one child, who has been with petitioner's wife during his long period of incarceration (R. 15).

Prior to service of the complaint, Klapprott had been an active member of the German-American Bund, and because of that fact, and existing war hysteria, coupled with his poor financial condition, he was unable to obtain counsel to represent him in defense of the charges (R. 12). The prescribed time for filing an answer or other pleading to said complaint was 60 days following date of service, but approximately 8 days prior to the expiration date, petitioner was taken into custody by the Federal Authorities, as result of an indictment which was found against him along with many other persons in the United States District Court for the Southern District of New York, the charge being a conspiracy to violate the Selective Service Act (R 13) *United States vs. Wilbur Keegan et al.* Klapprott was promptly arrested by agents of the Federal Bureau of Investigation, and certain personal belongings were taken from him (R 12), including a letter that he had written and addressed to the American Civil Liberties Union of New York City in which he explained that he was without funds to retain an attorney and re-

quested that they arrange for some legal assistance relating to the citizenship case.

He was held under a bond of $25,000.00, and appeared before the United States Commissioner at Newark, N. J., waiving removal to New York City, N. Y., where he was placed in confinement and held under the same bond as aforesaid, which, because of poverty was unable to raise. The record is silent as to whether or not the removal hearing was attended by a member of the United States Attorney's Office at Newark, N. J.; *however, the indictment of Klapprott and the many others caused such widespread publicity in the newspapers and other mediums that the authorities in Newark, N. J., and particularly those attached to the United States Attorney's Office, most certainly knew, or should have known, of the fact that petitioner had been removed from the jurisdiction of the State of New Jersey to that of New York, and was being held under a bond of $25,000.00.*

On July 17, 1942, the Clerk of the United States District Court, at the request of an Assistant United States Attorney, entered a default judgment against petitioner for failure to answer the complaint within the time prescribed therefor. (R 5)

Klapprott and the many others jointly indicted subsequently were brought to trial in the United States District Court for the Southern District of New York, and after a long and protracted proceeding, was found guilty and sentenced to serve a term of five years. The conviction was appealed to the United States Circuit Court of Appeals, Second Circuit, but in the meantime petitioner remained in custody and in June, 1943, decided to begin service of sentence and was transferred to the Federal Correction Institution at Milan, Michigan, where he remained until January 30, 1944 (R 13). He was then transferred to the District of Columbia, having been indicted jointly with 29 other persons in the case of

United States vs. Joseph McWilliams et al. (R 13), which was referred to as "The Sedition Case", the charge in substance being conspiracy to undermine the morale of the United States Armed Forces. The trial began April, 1944, and while in progress, the United States Circuit Court of Appeals, Second Circuit, on Feb. 29, 1944, affirmed the conviction. *United States vs. Wilbur Keegan et al.*, 141 F. 2d 148. A petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit was filed with this Honorable Court and granted May 15, 1944. On June 11, 1945, this Court reversed the conviction of petitioner and other defendants, *Wilbur Keegan et al. vs. United States*, 325 U. S. 348. As result thereof the 5-year sentence heretofore imposed on Klapprott was set aside.

The "Sedition Case," however, was still in progress, and petitioner remained in jail. After approximately 8 months of continuous trial the case was brought to an abrupt halt by the untimely death of Chief Judge Eicher, a mistrial declared December 7, 1944, but Klapprott was obliged to remain in jail in the District of Columbia until November 22, 1946, when Chief Judge Laws of the United States District Court for the District of Columbia dismissed the indictment. The aforesaid action was appealed by the Government to the United States Court of Appeals for the District of Columbia and the District Court, was affirmed on the 30th day of June, 1947, *United States v. Jos. McWilliams et al.*, 163 F. 2d 695.

For the first time in approximately 4½ years petitioner was removed from all convictions and criminal indictments, and stood a free man, but not for long, because he was immediately apprehended by the immigration authorities and removed to Ellis Island, New York Harbor, N. Y., to await deportation by virtue of his loss of citizenship.

Shortly after removal to Ellis Island, petitioner retained counsel to reopen his citizenship case, and on December 12, 1946, he executed an affidavit (R 15) which was filed in conjunction with other pleadings in the United States District Court for the District of New Jersey in an effort to vacate the default judgment, and permit him his day in court. A hearing was had January 28, 1947, the Government interposing a challenge to the jurisdiction of the Court. No testimony was taken and on February 7, 1947, an opinion was filed by the District Court (R 16) dismissing the proceeding and advancing as a basis therefor Klapprott's alleged laches in bringing the action. On March 17, 1947, an appeal was taken from the Judgment of the District Court to the United States Circuit Court of Appeals for the Third Circuit. On June 11, 1947, the United States Attorney for the State of New Jersey filed a motion to dismiss the appeal because of petitioner's failure to post bond for security of costs, notwithstanding the fact that petitioner was confined on Ellis Island. (R 22-23). He was temporarily released and was able to obtain the necessary costs and the Court entered an order permitting petitioner to file an Appeal Bond out of time, and he then returned to Ellis Island. The case was argued before the United States Circuit Court of Appeals for the Third Circuit October 16, 1947, and decided January 12, 1948. The judgment of the District Court was affirmed by a two to one decision (R 26), Circuit Judge Stephens dissenting (R 34) and stating:

> "I dissent. I entertain serious doubt as to the legality of a decree revoking citizenship without proof being adduced in open court. I hold that, in the circumstances of this case, the default should be set aside."

A petition for writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit was filed in

the Supreme Court of the United States April 10, 1948, and an order was entered May 17, 1948, allowing certiorari (R 37). During the month of July, 1948 petitioner was released from Ellis Island on parole awaiting the outcome of this case.

SPECIFICATION OF ERRORS TO BE URGED

The United States Circuit Court of Appeals for the Third Circuit erred:

1. In failing and refusing to hold that petitioner's certificate of citizenship should not have been revoked without ex parte evidence being adduced in open court.

2. In failing and refusing to hold that petitioner's constitutional rights were abridged when the Government took a default judgment cancelling his certificate of citizenship in the United States District Court for the Disrict of New Jersey, while the Government had petitioner confined in another jurisdiction.

3. In failing and refusing to hold that there was a manifest duty upon the Federal authorities in New Jersey to advise petitioner that a default judgment was to be taken against him, and to arrange for his transportation from confinement in New York City to the District Court in Newark, N. J.

4. In failing and refusing to hold that petitioner, by the action of the authorities was denied the protection of the due process clause of the Constitution.

5. In failing and refusing to hold that, under the circumstances of this case, counsel should have been appointed to represent petitioner.

6. In failing and refusing to hold that petitioner was not chargeable with laches for failing to take steps to

reopen the case during his period of confinement in jail, during which time he was involved in a turmoil of criminal litigation.

SUMMARY OF ARGUMENT

1. Petitioner's certificate of citizenship should not have been cancelled and revoked by a default judgment without the production on the part of the Government of clear and unequivocal ex parte evidence adduced in open court.

2. Petitioner's constitutional rights were abridged and he was denied the benefit of the due process clause of the Constitution when the Government proceeded to take judgment by default in the United States District Court for the District of New Jersey because of petitioner's alleged failure to answer the complaint within the prescribed time limited therefor, when the authorities knew or should have known that he was being held by the Government and confined to jail in New York City under a bond of $25,000.00, which because of his impoverished financial condition he was unable to raise, all of which rendered it impossible for him to appear in court within the prescribed time to answer the complaint. The court should have been advised at the time of application for a default judgment of petitioner's inability to appear, and the court should have been requested to appoint counsel.

3. Petitioner was not justifiably chargeable with laches for failing to take the necessary steps to reopen his case while confined for a period of 4½ years and the subject of a constant turmoil of criminal litigation.

4. The allegations contained in the Complaint were not sufficient to support the charge that petitioner had fraudulently and illegally procured his certificate of citizenship.

ARGUMENT

1. Petitioner's Certificate of Citizenship Should Not Have Been Cancelled and Revoked by Default Judgment Without the Production of Clear and Unequivocal Ex-parte Evidence.

On May 12, 1942, a Complaint was filed by the United States Attorney for the Northern District of New Jersey, pursuant to Section 338 of the Nationality Act of 1940, 54 Stat. 1158, 8 U. S. C. A. 738, to revoke the order admitting petitioner to citizenship and to cancel the certificate of naturalization issued thereon on the grounds of fraud and illegality. (R 2)

Title 8 U. S. C. A. 738 (a) reads as follows:

> "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of Section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured".

Paragraph (b) of the same section is as follows:

> "The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, *have sixty days personal notice in which to make answer to the petition of the United States;* and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by laws of the State or the place where such suit is brought".

Title 8, U. S. C. A., Section 738 *does not specifically authorize the cancellation of a certificate of naturalization by means of a default judgment.* If such inference can be drawn from the language of the statute, we respectfully urge that evidence ex parte, clear and unequivocal, should be a prerequisite to the granting of such judgment. Reference is made to the dissenting opinion of Circuit Judge Stephens (R 34) on that subject:

> "I dissent. I entertain serious doubt as to the legality of a decree revoking citizenship without proof being adduced in open court. I hold that, in the circumstances of this case, the default should be set aside."

Notwithstanding the fact that Circuit Judge O'Connell concurred in the majority opinion, we make reference to that portion of his separate opinion concerning the taking of a default judgmnet without evidence ex parte:

> "While there can be no doubt that a default judgment may be entered in a proceeding to cancel a certificate of citizenship, I believe that where such judgment is not based upon the presentation of evidence ex parte, every consideration possible should be given to the opening of such judgments, so that citizens may not be lightly deprived of the highest right within the power of the government to bestow."

Reading the complaint in its entirety (R 2) it is not difficult to visualize just how correct and important the foregoing statements of the learned Judges are. We are accordingly quoting certain excerpts from the complaint and affidavit on which the judgment was predicated.

Petitioner became a citizen of the United States November 16, 1933, and the complaint for denaturalization was filed May 12, 1942, approximately eight years and seven months having elapsed. (R 2) Paragraph four (R 2) reads as follows:

"Accordingly, as provided by statute on November 16, 1933, the defendant was administered and took the oath required for naturalization thereupon solemnly declaring before God in open Court that he absolutely and entirely renounced and adjured all allegiance and fidelity to the state or sovereignty of the German Reich; that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same, and that he took the obligation freely and without any mental reservation or purpose of evasion."

Paragraph six charged Klapprott in substance with perjury in that it is claimed he "fraudulently and illegally obtained an order for citizenship", (R 3) and that the certificate of citizenship should be revoked for the following reasons. (R 3)

"At the time the defendant took the oath to the petition for naturalization and the oath of allegiance to the United States of America, and renounced his allegiance to the German Reich, *the defendant well knew and realized he was not attached to the principles of the Constitution of the United States,* and he did not in fact intend to renounce and abjure absolutely and entirely his allegiance and fidelity to the state or sovereignty of the German Reich of which he was theretofore a subject or citizen and, further, that he would not bear true fatih and allegiance to the Constitution of the United States of America against all enemies, foreign and domestic, and further that he did not take the obligations of the oath freely and without any mental reservation or purpose of evasion."

Just what proof did the Government have to charge *"mental reservation"* and *"purpose of evasion"* at the time petitioner took his oath of allegiance to the United States of America on November 16, 1933? The complaint was filed approximately 8 years and 7 months later, all of which should have made the requirement of evidence ex parte more essential in taking a default judgment in his

case. The only facts presented to the court in support of the charges contained in the complaint was the affidavit of W. Rulon Paxman, a Special Agent of the Federal Bureau of Investigation (R. 4-5), and we quote it verbatim:

> Trenton, New Jersey
> May 12, 1942.
> COUNTY OF ESSEX,
> DISTRICT OF NEW JERSEY, ss.
> W. Rulon Paxman, being duly sworn on his oath, deposes and says:
>
> 1. I am a Special Agent of the Federal Bureau of Investigation, U. S. Department of Justice, and I am assigned to duty in the Newark Field Division at Newark in the District of New Jersey and in the course of my official duty I have examined the files of the Federal Bureau of Investigation and in cooperation with the Immigration and Naturalization Service of the Department of Justice, I have received from the offiical files the facts concerning the Naturalization proceedings of the subject August Klapprott.
>
> 2. I have heretofore presented a statement of the facts in this matter to Thorn Lord, Assistant United States Attorney for the District of New Jersey.
>
> 3. I have this day read the annexed copy of the form of complaint entitled United States of America v. August Klapprott, dated May 12, 1942 to which this is attached and the facts stated therein are true to the best of my knowledge and belief and the sources of the said facts are the official records of the files of the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice.
>
> 4. I have been officially advised by the said Thorn Lord, Assistant United States Attorney that in the opinion of the United States Attorney the facts presented to him by me and set out in the annexed form of complaint state a good cause for action under the provisions of Section 738 of Title 8, U. S. C. A. for the revocation of the Naturalization of August Klapprott.
>
> W. RULON PAXMAN
> Special Agent
> Federal Bureau of Investigation

Sworn and subscribed to before me at Newark, New Jersey, this 12th day of May, 1942.

STANLEY RUTTCOWSKI
Notary Public of New Jersey

Just what were the facts that Special Agent Paxman found as result of his examination of the files of the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice? Were they such facts as would support the charge that August Klapprott had a "mental reservation" and "purpose of evasion" at the time he took his oath of allegiance to the United States of America, some 8 years prior thereto? If so, why were these facts not presented to the District Court in the form of testimony and made part of the record at the time the default judgment was taken?

There is nothing in the foregoing affidavit to the effect that the petitioner was personally investigated by affiant, but the affidavit is predicated solely on information taken from the records compiled by some other person or persons, and is only hearsay. Surely this is not the type of clear and unequivocal proof that should have been required. In the case of *Schneiderman v. United States*, 320 U. S. 118, 87 L ed. 1793, this Court stated, in referring to the question of denaturalization, p. 122:

> "• • • In its consequences it is more serious than a taking of one's property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men. This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on *legal grounds under appropriate proof*. But such a right once conferred should not be taken away without the clearest sort of justification and proof. So, whatever may be the rule in a denaturalization pro-

ceeding (see United States v. Manzi, 276 U. S. 463, 467, 72 L. ed. 654, 655, 48 S. Ct. 328), in an action instituted under § 15 for the purpose of depriving one of the precious right of citizenship previously conferred we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen. Especially is this so when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness. It is not denied that the burden of proof is on the Government in this case. For reasons presently to be stated *this burden must be met with evidence of a clear and convincing character that when citizenship was conferred upon petitioner in 1927 it was not done in accordance with strict legal requirements.*"

In the case of *Baumgartner v. United States*, 322 U. S. 665; 88 L. ed. 1525, Justice Frankfurter speaking for the Court stated, page 1531:

"* * * New relations and new interest flow, once citizenship has been granted. All that should not be undone unless the proof is compelling that that which was granted was obtained in defiance of Congressional authority. * * * That is why denaturalization on this score calls for weighty proof, especially when the proof of a false or fraudulent oath rests predominantly not upon contemporaneous evidence but is established by later expressions of opinion * * *."

Unquestionably, the foregoing cases support the statement that denaturalization cases must be approached with the *scrupulous care and regard usually afforded criminal cases.*

There can be no doubt but what the Courts have recognized the criminal aspect of a denaturalization proceeding based on fraud and illegality. In the case of *United States v. Heymig*, 50 F. Supp. 566, P. 567, the Court stated:

"From these excerpts from decisions in other Federal Courts it seems clear to me that the rule not only should be, but is, THAT EVIDENCE OF FRAUD

MUST BE CLEAR AND CONVINCING TO A DEGREE THAT IT SATISFIES THE MIND OF A COURT OF THE TRUTH OF THE CHARGES, *BEYOND A REASONABLE DOUBT*".

In a divorce case, ex-parte evidence is required, and we make particular reference to the Revised Statutes of the State of New Jersey, Vol. 1, Sec. 2.50-27, which in part reads as follows:

> "If the defendant shall not file an answer within the time limited by this chapter or granted by the Court, the Court may make an order that petitioner proceed to take depositions and other evidence and bring on the hearing of the cause ex-parte".

In a debt action, a default is sometimes regarded as an admission of record of the existence of the obligation claimed, and the amount of damages is not always regarded as admitted by default, citing, *Hanover F. Ins. Co. v. Furkas*, 267 Mich. 14, 255 N. W. 381. In the case of *Florida East Coast R. Co. v. McRoberts*, 111 Fla. 278, 149 So. 631, 94 A. L. R. 376, it was held that damages claimed in a punitive damage count of a declaration is not admitted by default. Surely if such actions as divorce require submission of proof as do cases involving unliquidated damages, can it reasonably be argued that a case involving the most sought after possession of man, his American Citizenship, shoud be revoked and cancelled without the requirement of evidence in some manner or form? If there was ever a type of judgment that should be considered void as against public policy, this case represents that example.

In the case of *United States v. Polzin* reported in 48 F. Supp. 476 the Court on page 480 stated in part:

> "However, we have no right to cancel citizenship upon mere speculation. There must be satisfactory proof of fraud or illegality at the time citizenship was granted because, as the statute now reads, it is

only in such instances that citizenship can be taken away."

In *U. S. v. Bergman*, 144 F. 2d 34, the Circuit Court of Appeals in reversing the case held that citizenship once granted should not be revoked *except on positive proof of fraud*, and allowance should be made for any statements made in heat of passion.

We respectfully urge that August Klapprott in his helpless condition, confined in jail in another jurisdiction, under an excessive bail of $25,000.00, was unable to appear and should have been afforded the protection of Rule 55 (b)(2), Rules of Civil Procedure for the District Courts of United States, and that a written notice of the Government's application for default judgment at least 3 days prior to the hearing thereof should have been served upon either Klapprott or his immediate Custodian. Rule 55 (b)(2) reads as follows:

> (2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared herein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

The foregoing rule makes no provision as to notice of default concerning a person confined in jail as was Klapprott, yet all facts considered, and circumstanced as he was, we respectfully urge he should have been afforded the benefit of the rule, and a written notice of at least 3 days prior to the application for a default judgment should have been served on petitioner or his custodian in New York City.

In the opinion of the United States Circuit Court of Appeals for the Third Circuit (R 26) it is stated, with reference to a default judgment (R 28):

> "The question of whether the facts have to be proved in a default denaturalization has been raised in the Second Circuit and passed upon there adversely to the appellant's contention. United States vs. Borchers, 163 F. 2d 347 (C. C. A. 2, 1947), Cert. denied — U. S. — (October 27, 1947). We agree with the Second Circuit."

In view of the foregoing case being cited in support of the position that a default judgment in a denaturalization case may be taken without evidence ex parte, we feel constrained to draw an analogy between the foregoing case and the instant one, which clearly shows the facts in the two cases are most certainly not analogous.

In the opinion of Circuit Judge Augustus N. Hand it is stated, *United States v. Borchers:*

> "The present appeals mark the *fourth time* the defendants Borchers and Fentzke and the *fifth time* that Knupfer have attempted to challenge judgments of denaturalization entered against them by default in 1943.
>
> • • • • •
>
> "Knupfer, as we have related in a previous decision —United States ex. rel. Knupfer v. Watkins, 2 Cir. 159 F2d 675—*filed an answer, but before trial, withdrew his answer and "demanded" cancellation of his citizenship. Borchers and Fentzke filed no formal answers,*

but wrote letters to the United States Attorney declaring that they thereby renounced their citizenship, but denying the allegations of the complaint.

• • • •

"appeals were filed from two of the orders that had been entered denying their motions.

• • • •

"Those appeals were thereupon abandoned by stipulation of the parties and by order of the Eastern District Court dated June 27, 1946".

• • • •

"We hold that the orders of Judge Abruzzo should be affirmed because: (1) Motions to open and vacate do not lie as a substitute for a DELIBERATELY ABANDONED APPEAL, (2) THE APPELLANTS IN EFFECT CONSENTED TO THE ENTRY OF THE DECREES AGAINST THEM, (3) the error they relied on of neglect to give them a three-days notice of application for judgment was at most only procedural and *not jurisdictional, and is not shown to have been prejudicial to their rights,* (4) if the proceedings be treated as in the nature of bills of review they are defective in failing to show any *excuse for delay* and to furnish any facts to support charges of fraud.

The specific differences between the Borchers and the Klapprott cases are:

1. *Klapprott never abandoned his appeal.*
2. *Klapprott never consented to the entry of the decree against him.*
3. *Klapprott did not write a letter to the United States Attorney as did Borchers and Fentzke declaring that he thereby renounced his citizenship.*
4. *Klapprott did not demand cancellation of his citizenship as did Knupfer.*
5. *Klapprott's confinement in another jurisdiction was such that he was entitled to a 3 days notice of the application for judgment by default, and the absence of such notice was prejudicial to his rights.*
6. *Klapprott has furnished sufficient excuse for his*

apparent delay in moving to set aside the default judgment in that his confinement for approximately four and one-half years in midst of a turmoil of litigation has definitely been established and provides a justifiable excuse.

In view of the foregoing facts it is urged that the circumstances in the Borchers case are so different from those in the Klapprott case, that the opinion of the Second Circuit Court of Appeals so far as it relates to default judgments should not be applied here.

Analyzing the complaint and affidavit, it narrows down to the fact that the affiant W. Rulon Paxman reviewed certain records compiled by third persons, then furnished that information to the Assistant United States Attorney who in turn expressed an opinion to affiant that such facts constituted a good cause of action sufficient to revoke petitioner's citizenship. It is our contention that the District Court Judge was the proper person to decide whether such facts were sufficient to revoke and cancel Klapprott's citizenship and we reiterate that these facts, whatever they were, should have been presented in the form of evidence ex parte. Citizenship in the United States is most certainly a possession that should not be taken from a person without the production of evidence of a clear and convincing character to warrant its cancellation end revocation.

2. Petitioner's Constitutional Rights Were Abridged and He Was Denied the Benefit of the Due Process Clause of the Constitution When the Government Proceeded to Take Judgment by Default in the United States District Court for the District of New Jersey Because Petitioner Failed to Answer the Complaint Within the Prescribed Time Limited Therefor, When the Authorities at the Time Knew, or Should Have Known He Was Confined in Jail in Another Jurisdiction, and Held Under a $25,000 Bond.

The complaint was personally served on petitioner May 15, 1942 (R 7), at which time he was recovering from a severe illness and had been previously hosiptalized. (R 7). The time prescribed for answering was 60 days following service, and in the meantime Klapprott exerted every effort to obtain counsel to fight the charges, but was unsuccessful because of war hysteria, the nature of the charges, and his lack of funds (R 14). Approximately 8 days before the prescribed time to answer the complaint had expired, he was arrested along with many other persons, all of whom had been indicted by a Federal Grand Jury in New York City. Petitioner waived removal and was taken to New York City and placed in confinement, his indictment and arrest causing widespread notoriety and publicity. After removal to New York the District Court for the Southern District appointed counsel to represent him in the case of *United States v. Wilbur Keegan et al.*, and Klapprott immediately called to that attorney's attention the matter concerning the complaint to cancel his certificate of citizenship. Counsel assured petitioner that he would look into the case, but he failed to do so and the default judgment was taken (R 13). On pages 2, 4, 7, 17 and 23 of petitioner's brief in support of the petition for a writ of certiorari, statements are made to the effect that *the fact of petitioner's removal to another jurisdiction most certainly was known or should have been known by the authorities, and nowhere contained in the respondent's reply brief is a statement that the authorities in Newark, N. J., were without such knowledge at the time of application for the default judgment* for his failure to answer the complaint within the prescribed period of time. We can only infer that at the time of taking default judgment the United States Attorney's Office at Newark, New Jersey, was aware of petitioner's inability to present himself in the United States District Court for the District of New Jersey.

It is urged, in view of the circumstances in which Klapprott was placed, that the Assistant United States Attorney, prior to filing a motion for default judgment, should have called to the attention of the District Court the fact that petitioner was incarcerated in another jurisdiction, and that it was impossible for him to take the necessary steps to protect his interests. We feel confident, had the facts been made known to the court, *either counsel would have been appointed immediately to represent petitioner, or the authorities would have been directed to provide the ways and means to bring him before the Court.* The record is silent as to any such effort on the part of the Government, whose agents, on the one hand, moved for a default judgment in the State of New Jersey cancelling petitioner's certificate of citizenship and on the other hand, prevented his appearance because of incarceration in the State of New York under a prohibitive bond of $25,000.00. It is difficult for us to conceive that the Government can reasonably urge that petitioner was afforded protection of the due process of law clause, or that his constitutional guarantees were not abridged by virtue of what transpired. Klapprott was entitled to his day in court and a hearing of the case on the merits. *The due process clause of the Fifth Amendment provides that no person shall be deprived of life, liberty or property without due process of law, and an essential element of due process is AN OPPORTUNITY TO BE HEARD BEFORE REACHING OF A JUDGMENT.* By due process of law is meant "A LAW WHICH HEARS BEFORE IT CONDEMNS; WHICH PROCEEDS UPON INQUIRY AND RENDERS JUDGMENT ONLY AFTER TRIAL". *Dartmouth College v. Woodward*, 4 Wheat, 519, 581 (U. S. 1819). As said in *Galpin v. Page*, 18 Wall, 350, 368 (U. S. 1873):

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, AND

HAS BEEN AFFORDED AN OPPORTUNITY TO BE HEARD. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered."

In the case of *L. B. Wilson, Inc., Appellant, vs. Federal Communications Commission*, United States Court of Appeals for the District of Columbia No. 9434 decided April 12, 1948 the Court in *reversing and remanding the case* stated, P. 7:

"In the construction of a statute its provisions should if possible be given a reasonable meaning. Unreasonable consequences should be avoided. Cf *United States vs. American Trucking Association*, 310 U. S. 534-543. (1940)

It would give an unreasonable meaning to the Commission's Act, in view of the purpose of the Act and of the Commission's duties under it, to construe it as not contemplating a hearing to an outstanding licensee on the question whether the extention of facilities to another station will constitute an indirect modification of his license * * *."

P. 15—"Qui aliquid statuerit parte inaudita altera; æquum licent, dixerit, haud æquum fecerit."

"HE WHO DECIDES ANYTHING, ONE PARTY BEING UNHEARD, THOUGH HE SHOULD DECIDE RIGHT, *DOES WRONG*."
6 Co. 52; 4 Bla. Com. 483" 2 Bouvier's Law Dictionary (3d ed. (Rawle) 1914 2157.

It is conceded that petitioner was properly served with process, but we respectfully urge he was denied due process of law and his constitutional guarantees were abridged when the default judgment was taken.

One can arrive at no other conclusion than it was manifest error on the part of the Government to take a default judgment against Klapprott in view of the extraordinary circumstances and conditions that prevailed, and since

the proceeding was in the nature of a forfeiture, Klapprott should have been afforded the right to at least testify in his own behalf.

3. Petitioner Was Not Justifiably Chargeable With Laches for Failing to Take the Necessary Steps to Reopen His Case While Confined for a Period of 4½ Years and the Subject of a Constant Turmoil of Criminal Litigation.

In the opinion of District Judge Smith, United States District Court for the District of New Jersey, it is stated (R. 19):

> "This action was initiated by the defendant more than four years after the entry of final judgment in the original proceedings. This undue delay is imputable entirely to his wilful and inexcusable neglect. The action must, therefore, be dismissed because of the defendant's laches * * *"

In the concurring opinion of Circuit Judge O'Connell (R 34) of the United States Circuit Court of Appeals, Third Circuit, it is stated:

> "* * * There being ample evidence in the record before us to justify the finding of the court below that Klapprott had been guilty of laches, I am constrained to agree with the conclusion that the order of the District Court should be affirmed."

We most respectfully disagree with the opinions of the courts below, holding that petitioner was justifiably charged with laches. It is urged that one who has been in jail, as was Klapprott, for a period of 4½ years, subjected to long, protracted trials by virtue of two criminal indictments, one of which was reversed by this Honorable Court and the other dismissed by the United States District Court for the District of Columbia, and affirmed on appeal, should not be held to normal restrictions and ironclad rules as to any time element in an effort to regain citizenship, *taken by default under very unusual circumstances.* We respectfully contend the instant case, so far as the question of laches is concerned, should be treated

and placed in the same category as the case of *Rene de LaMeer vs. People of the State of Michigan*, Supreme Court Law Ed. Advance Opinions Vol. 90, No. 7, Page 47, which was reversed; also the case of *Tony Merino vs. Joseph E. Regan* reported in Vol. 92, No. 5, Supreme Court Law Ed. Advance Opinions, page 203, in which case the judgment below was vacated and the case remanded. In the Rene De LaMeer case a period of approximately *15 years* had elapsed before the matter was brought to this court and in the Merino case a period of *22 years* elapsed. Both cases were reviewed and the convictions held to have been in violation of those petitioners' constitutional rights. WE URGE THAT THE KLAPPROTT CASE INVOLVED A SIMILAR ABRIDGMENT OF CONSTITUTIONAL RIGHTS IN THE INCEPTION AND A VIOLATION OF THE DUE PROCESS CLAUSE. Can it then be said, that one whose constitutional rights have been abridged is estopped in protesting such abridgement by any time element, be it one year or ten years? We are confident the answer must be in the negative.

The fact that Klapprott did not move for a period of approximately 4½ years in an effort to set aside the default judgment can most certainly be attributed to the following facts:

His indictment in the case of *United States v. Wilbur Keegan et al.*, Southern District of N. Y.; his removal from the State of New Jersey to New York; his confinement in prison, under a bond of $25,000.00; his impoverished financial condition preventing him from making bond; his subsequent conviction and five years sentence imposed in the Selective Service conspiracy case; the affirmation of that conviction by the United States Circuit Court of Appeals for the Second Circuit, *Wilbur Keegan et al. v. United States*, 141 F. 2d 248; petitioner's removal to the Federal Correction Institution at Milan, Michigan; his subsequent indictment in the case of *United States v. Joseph McWill-*

iams et al., in the District of Columbia; his removal from Michigan to the District of Columbia; a protracted trial of approximately 8 months as a defendant in the foregoing case; a reversal by this Court of the case of *Wilbur Keegan v. United States*, 325 U. S. 348; the dismissal of the case of *United States v. Joseph McWilliams et al.*, which was affirmed by the United States Court of Appeals for the District of Columbia, *United States v. Joseph McWilliams et al.*, U. S. Ct. of Appeals for D. C. Case No. 9438, and all of which most certainly constituted a turmoil of legal entanglements that should justify a defendant involved as was this petitioner for not moving more expeditiously in the civil case involving citizenship. It must be conceded that one serving a five year sentence, and facing a possible additional ten year sentence, was in no state of mind to think normally, or be charged with normal actions under such conditions. Klapprott should not be charged with knowledge of the Federal Rules of Civil Procedure or of other legal requirements, particularly while under the strain and stress of protracted trials, and with that contention we feel there is no dispute. In view of the foregoing, can it reasonably be said that the petitioner should have been charged with laches? We think not.

We respectfully urge that the apparent delay on the part of petitioner to set aside the default judgment entered July 17, 1942 (R 5), is most certainly imputable to causes beyond his control, and all circumstances considered, the petition was timely. Laches predicated solely on lapse of time is not a justifiable reason for refusing to set aside the judgment and permitting petitioner his day in Court. *He should be afforded a trial on the merits.* There is no absolute rule as to what is "laches". The right of Klapprott to set aside the judgment, all factors considered, is NOT BARRED BY LACHES BECAUSE OF LAPSE OF TIME ALONE, WHERE THERE HAS BEEN NO PREJUDICE TO THE GOVERNMENT BY THE DE-

LAY, AND WHERE PETITIONER NEVER ACQUIESCED TO THE DEFAULT JUDGMENT. The doctrine of "laches" is not designed to punish a plaintiff, and can be invoked only where to allow a claim would, because of claimants own acts, permit an unwarranted injustice. *McClelland v. Shaw*, 72 P. 2d 225, 23 Cal. App. 2d 107. What unwarranted injustice would the Government suffer if petitioner was permitted his day in Court? If the Government maintains that Klapprott is guilty of the charges set forth in the Complaint, then let clear unequivocal proof of the charges be produced. The question as to whether a claim is barred by "laches" must be determined by circumstances in each case and according to right and justice. What would be laches in one might not constitute such in another. It goes without argument the question of laches is one addressed to the sound discretion of the Court, depending on all facts and circumstances of the particular case, and if such be the rule, we most respectfully urge that the District Court in holding Klapprott chargeable with laches in the instant case abused that discretion. (R 16). The circumstances of this case clearly show that petitioner from date of his arrest, July, 1942 (R 8) up to the time of filing his petition to re-open the case was suffering a legal disability as result of his continued incarceration in an involvement of legal turmoil. In the case of *Garza v. Kennedy, Texas*, 299 S. W. 231, it was held that a person laboring under legal disability is not chargeable with laches for failure to move during disability, but is only required to exercise reasonable diligence in moving to vacate a judgment rendered against him after removal of the disability; "laches" not being mere lapse of time, but being unreasonable delay under circumstances generally involving injustice or injury to the opposite party. The foregoing language fits petitioner's case. With a conviction of in the case of *U. S. v. Wilbur Keegan et al*, 141 F. 2d 148, a five year sentence, and a possible ten year sentence if convicted in the case of *United States v. Joseph*

McWilliams, 163 F. 2d 695, confronting petitioner, can it reasonably be said that he was in a position to obtain assistance from friends or relatives to defend his case? As soon as the barriers of sentence and criminal indictments were lifted, he immediately sought aid and did so promptly, and his actions were such as to at least impute reasonable diligence.

Laches is a substantive defect, although it applies to procedural matters as well. If the District Court's contention was that it had no jurisdiction, then laches was not necessary to the Court's decision. If, however, laches is an important criterion, then the Court's jurisdiction is not affected and the sequitur is that, because of undue delay, the aggrieved party may not prevail. There can be no doubt but what under proper circumsfances, a judgment cancelling citizenship can be vacated and set aside, and time should not act as a barrier in justifiable cases. In the case of *United States v. Geisler*, reported 9 F. R. S., 60 B 51, involving a cancellation of the defendant's certificate of citizenship, a PERIOD OF ALMOST FOUR YEARS ELAPSED BETWEEN THE ENTRY OF A CONSENT JUDGMENT AND THE APPLICATION TO SET IT ASIDE, YET THE DISTRICT COURT SET THE JUDGMENT ASIDE. There are cases too numerous to recite where delay of several years in maintaining actions was not barred by laches.

In the case of *Smith v. Smith*, 10 So. 2d, 664, 665, 243 Ala. 488, it was held that the filing of a bill in nature of a bill of review within three years after rendition of a decree did not constitute "laches." Other cases which have held that an unusual length of time in bringing an action was not a barrier, are *United States v. One Case Chemical Compound*, 203 F 63; *McDowell v. Bauman*, 224 SW 641.

In the case of *Holmberg v. Armbrecht* reported in 327 U. S. page 390, 90 L. ed. 743, Mr. Justice Frankfurter in delivering the opinion of the Court stated,

"Equity eschews mechanical rules; it depends on flexibility. Equity has acted on the principle that 'Laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—and inequity founded upon some change in the condition or relations of the property or the party.'"

Citing *Galligher v. Cadwell*, 145 U. S. 368.

In the case of *Keeler Bros. v. Yellowstone Valley National Bank*, 225 Fed. 270 the judge in his opinion stated:

"* * * Speedy determination of litigation, sometimes invoked as sufficient reason to deny the motion, is not the end, but means, to justice; and delays from defaults, generally more apparent than real, should be penalized by terms rather than by judgments, that may be gratuities to plaintiffs, and punishments to defendants, having nothing of the ultimate justice therein. Hence courts ought to and do lean to trials of the merits, and to vacate defaults even when only doubtful whether the inference or presumption is repelled or overcome, or, as generally put, doubtful whether the default should be opened * * *"

Is not this the better view to follow in the administration of justice and particularly in a case involving the most priceless possession of man, his American citizenship? We urge that the record of this case amply supports the conclusion that petitioner having suffered the disability of confinement for four and one-half years, involved in a turmoil of protracted criminal litigation cannot be justifiably charged with laches, and we particularly urge, laches should have been proven before being applied. August Klapprott was not guilty of willful and inexcusable neglect, all circumstances and conditions considered.

If the Government was in error in the inception by taking a default judgment, and petitioner's constitutional rights were abridged and violated by that action, can it then be reasonably argued that charging Klapprott with

laches was the proper approach to correct the original error which was not his. We think the question should be answered in the negative.

4. The Allegations Contained in the Original Complaint Were Not Sufficient to Support the Charge That Petitioner Fraudulently and Illegally Procured His Certificate of Citizenship.

The portion of the District Court's opinion relating to this phase of argument reads as follows (R 19):

> "It is contended by defendant that "the allegations of the complaint, even if considered as admitted, by reason of the (defendant's failure to answer the same, do not meet the requirements of the clear, unequivocal and convincing proof required as a basis of judgment". This contention presupposes that a default judgment may be entered only upon proof of the allegations of the complaint, and with this we cannot agree. *The allegations of the original complaint were sufficient to support the charge that the certificate of naturalization was illegally and fraudulently procured* • • •."

We feel confident that the Government would be constrained to admit, if this cause was to go to trial on the merits, taking into consideration the decisions of the United States Supreme Court, the various Circuit Courts of Appeals, and the District Courts, a decision of necessity would be found for this defendant. An examination of the complaint will reveal that printed forms were prepared, and in which blank spaces were left for purpose of filling in particular facts concerning each defendant, whom the Government might consider subject to an action for cancellation of certificate of citizenship. The complaint was stereotype of nature, and the specific charges against petitioner were typed in spaces so provided.

Paragraph five of the complaint (R 2) is a descriptive example. Here we have charges incorporated in printed forms and the only portion thereof that was *typed in* was the number *"370-7549"* and the date *"November 16, 1933."* (R 2-3) The charges contained in that paragraph are as follows:

> "The oath made by the defendant to the petition, and of renunciation of allegiance to the German Reich, was *false* and, thereby, *he fraudulently and illegally obtained* an order for admission to citizenship, and the certificate of naturalization (No. 370-7549), which was received by the defendant on November 16, 1933, should be revoked and cancelled for the following reasons:
>
> "At the time the defendant took the oath to the petition for naturalization and the oath of allegiance to the United States of America, and renounced his allegiance to the German Reich, the *defendant well knew and realized he was not attached to the principles of the Constitution of the United States and he did not in fact intend to renounce and abjure absolutely and entirely his allegiance and fidelity to the state or sovereignty of the German Reich* of which he was theretofore a subject or citizen and, further, *that he would not bear true faith and allegiance to the Constitution of the United States of America against all enemies, foreign and domestic,* and further that he *did not take the obligations of the oath freely and without any mental reservation or purpose of evasion.*"

Paragraph Six (R 3) of the complaint in which specific charges have been typed in the space so provided reads as follows:

> "The defendant is and has been notoriously and openly one of the chief leaders and active members of the German-American Bund and its affiliates in and about the District of New Jersey. He has been president of the German-American Bund and Director of Camp Nordland; Vice President of the A. V. Pub-

lishing Company; member of the Board of the A. V. Developments Corporation; head of the Protective Citizens' League, Inc., trustee for the Eastern Department of National Protective Trustees."

A further portion of the allegations typed in the blank spaces so provided in the Complaint (R 3) are:

"From time to time and subsequently to 1935, the defendant has made, both in writing and in speeches, numerous statements indicating his allegiance and loyalty to the German Reich and his disregard and disrespect for the principles and institutions of the United States of America."

"The principles of the organizations referred to are inimical to the Constitution of the United States and to the good order and happiness of the United States, and in fact were propagated and encouraged by the present enemies of the United States including persons who believe in the ideology enunciated by Adolph Hitler and the present ruling party of the German Reich."

Could it possibly be inferred that the Government could have produced "clear" and "unequivocal" evidence to prove *beyond a reasonable doubt* that appellant fraudulently and illegally obtained an order for admission to citizenship, or that he was not attached to the principles of the Constitution of the United States, or that he did not in fact intend to renounce and abjure absolutely his allegiance and fidelity to the state or sovereignty of the German Reich, or that he would not bear true faith and allegiance to the Constitution of the United States of America against all enemies, or that he did not take the obligations of the oath freely and without any mental reservation or purpose of evasion? We think not, for in the first place, the fact that the above allegations are contained in that portion of the complaint that appears to be a mimeographed form, appear to make the charges applicable to all persons of German birth who had been naturalized and later found themselves subject to a similar proceeding.

There is no denial but what Klapprott was a member of the German-American Bund and an officer of that organization, but that alone would be insufficient to support the charges. Since date of filing the complaint, and with particular reference to petitioner's affiliations with the "Bund" and other "organizations" associated thereto, we respectfully call to the attention of this Honorable Court many decisions that will conclusively support the argument, that mere association, active or otherwise, with the German-American Bund or other closely related organizations, *do not in themselves form a basis for cancellation of a certificate of citizenship.*

The following cases support the foregoing contention:

Schneiderman v. U. S. 320 U. S. 118, 87 L. ed 1796
Baumgartner v. U. S. 322 U. S. 665; 88 L. ed 1525
United States v. Hauck et al, 155 F2nd 141
United States v. Sotzek et al, 144 F2nd 576
United States v. Rossler 144 F 2d 463
United States v. Hartman 51 Fed Sup 394
United States v. Claassen 56 Supp. 71
United States v. Giese 56 F. Supp. 1018
United States v. Haas et al, 51 F. Supp. 910
United States v. Koerner, 56 F. Supp. 242
United States v. Kusche, 56 F. Supp. 237
United States v. Mensing, 56 F. Supp. 253

We have no knowledge as to the nature of the alleged "writings" and "statements" made by Klapprott (R 3) which it is said indicated his loyalty to the German Reich and his disregard and disrespect for the principles and institutions of the United States of America, but we can refer to many case *that have been reversed,* where the various defendants have made statements similar to those charged to petitioner, and which the Courts have held did not warrant a cancellation of a certifi ate of citizenship.

Particular attention is called to the denaturalization case of *Meyer v. U. S.* 141 F2d 825, and in which proceeding the

5th Circuit Court reversed the District Court, and specific reference is made to the opinion of Circuit Judge Hutcheson relating to the record as set down by the District Court concerning statements made by Meyer, Page 27.

> "In support of his ultimate conclusion, the District Judge set down that the record showed: (1) that Meyer spoke disparagingly of the American people as contrasted with the German people, (2) that Meyer thought Germany would win the war; that he thought that in any war there was no moral question involved; that history showed that only success had ever counted where war was concerned; (4) that he was pleased over the victories of Germany over Poland, the Netherlands and France; (5) that he was frequently disgusted with America and thought the American people stupid; that he believed American patriotism to be narrow nationalism, and on one occasion said he could never be a real American (6) that he associated on friendly terms with Germans, some holding official places here under the German Government, who were later either interned or required to leave; (7) that once he said it would be a good thing to have a mild form of Fascism in America; (8) that in September, 1939, he wrote an article which said in effect that America was to blame for the war because it had gotten mixed up in the last one, and thereby prevented Germany's winning it; (9) that he thought that Germany would win, and he thought a German victory would be a blessing to the world; (10) that he many times used the words, "our country" and "my country" meaning Germany, and "your country" meaning the United States; (11) that he became an American citizen *only* because it was convenient, and because he could say anything he wanted to and that he would remain in this country only as long as it was to his material advantage * * * "

While there are explanations and statements relating to certain of the above allegations contained in the footnotes on P. 27 of the opinion, we earnestly urge, that had the Government made the alleged "writings" and state-

ments" attributed to Klapprott, a matter of record, they most certainly would not have been of the above character. Reference is made to the case of *United States v. Hauck et al*, 155 F2d, 141 which was also reversed on April 2, 1946. A cursory review of statements made by the defendant Hauck will be enlightening, as will those made by the defendants in *Bergman v. United States*, 144 F2d 35; *Jogwick v. United States*, 142 F2d 998.

Particular attention is called to that portion of the Court's opinion in *Baumgartner v. U. S.* 322 U. S. 665, Page 667:

> "There was testimony that in 1933 or 1934 Mrs. Baumgartner's Mother visited this country, and after this visit, Baumgartner, beginning in 1934" praised the work that Hitler was doing over there in bringing Germany back, on repeated occasions". Evidence of statements made by Baumgartner over a period of about seven years beginning in 1933 indicated off-repeated admiration for the Nazi Government • • • " that regimentation, as the Nazis formed (sic) it was superior to the democracy" and that "the democracy of the United States was a practical farce". • • • There was testimony that Baumgartner justified the German invasions in the late 1930's, and announced when Dunkerque fell, that, "Today I am rejoicing". • • • diary entries reflect violent anti-semitism, impatience of the lack of pro-German militancy of German Americans, and approval of Germans who have not "been Americanized, that is ruined." • • •

The fact that August Klapprott never returned to Germany, even for a visit, as did so many of the defendants in various denaturalization causes, is most certainly a supporting factor in his favor. How can one arrive at the conclusion that the allegations of the original complaint (R 2) were sufficient to support the charge that the certificate of naturalization was illegally and fraudulently procured by August Klapprott, when no factual statements capable of clear, sound and unequivocal proof were made,

nor was there any disclosures as to the nature of his statements contained in the "writings" and "speeches" charged in the complaint (R 3).

We most respectfully submit the allegations of the complaint could not be supported by clear and unequivocal evidence, nor in our opinion could the proof meet the standards set forth by the Supreme Court of the United States in the cases of *Schneiderman v. U. S.*, 320 U. S. 118; 87 L. ed 1796 and *Baumgartner v. U. S.*, 322 U. S. 665; 88 L. ed 1525.

CONCLUSION

In past history it has always been one of our principles that a defendant should have a trial on the merits where a fundamental right is involved. So much has this been ingrained in our law, our way of life, and our everyday approach to civil liberties, that the Courts have taken every precaution to preserve these most precious rights at all times. August Klapprott has a valid and meritorious defense to this action, and could show good faith and excusable neglect if afforded the opportunity. It is respectfully urged that under the circumstances and conditions associated with this case that he is entiled to his day in Court.

We further urge that petitioner has been denied the protection of the due process clause of the Constitution and that his constitutional guarantees have been definitely abridged. The judgment of the United States Circuit Court of Appeals for the Third Circuit should be reversed

and the case remanded to the United States District Court for the District of New Jersey for hearing on the merits.

(All emphasis supplied.)

Respectfully submitted,

P. Bateman Ennis
Shoreham Building
Washington, D. C.
W. Clifton Stone
Shoreham Building
Washington, D. C.
Morton Singer
135 Broadway
New York City, New York

Attorneys for Petitioner